

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8354 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

PREMATLAL AMRITLAL PUJARA & ORS

Versus

COMPETENT AUTHORITY & DEPUTY COLLECTOR (ULC) &
ANR.

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 28/06/96

ORAL JUDGEMENT

The order passed by the Competent Authority at
Rajkot (respondent No. 1 herein) on 26th June 1984 under
sec. 8(4) of the Urban Land (Ceiling and Regulation)
Act, 1976 (the Act for brief) as affirmed in appeal by

the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 19th January 1988 in Appeal No. Rajkot-1695 of 1984 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioners as an association of persons to be in excess of the ceiling limit by 10964 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioners as an association of persons filed their declaration in the prescribed form under sec. 6(1) of the Act with respect to their holding within the urban agglomeration of Rajkot. That declaration was duly processed by respondent No. 1. After observing necessary formalities under sec. 8 of the Act, by his order passed on 26th June 1984 under sub-section (4) thereof, respondent No. 1 declared the holding of the petitioners to be in excess of the ceiling limit by 10964 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioners carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-1695 of 1984. By the order passed on 19th January 1988 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. Learned Advocate Shri Nanavaty for the petitioners has urged that the land involved in this petition was used for agricultural purposes on the date of coming into force of the Act and there was no master plan answering its definition contained in sec. 2(h) of the Act with respect thereto, and as such it should not have been included in the holding of the petitioners in view of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 SC 2465.

4. In order to apply the aforesaid binding ruling of the Supreme Court in this case, it will have to be ascertained whether or not any master plan answering its definition contained in sec. 2(h) of the Act with respect to the land in question was in existence prior to coming into force of the Act and whether or not the land in question was situated in any agricultural zone therein

if it was in existence. It will have also to be ascertained whether or not agricultural operations were in fact carried on therein on the date of coming into force of the Act. This factual position will have to be ascertained by respondent No. 1. The matter will have to be remanded to him for the purpose. The impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition will have therefore to be quashed and set aside.

5. Before parting, it appears that petitioner No. 1 has filled in his separate declaration under sec. 6(1) of the Act and it appears that he has shown therein his share in the land involved in this petition. It does not become clear from the record of this case whether or not the other petitioners have filled in such declaration in the prescribed form. It would be desirable to take up for processing the individual declaration under sec. 6(1) of the Act filed by petitioner No. 1 in his individual capacity together with the declaration filed by the petitioners herein as an association of persons in order to avoid complications regarding his holding within the urban agglomeration of Rajkot.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 26th June 1984 at Annexure A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 19th January 1988 in Appeal No. Rajkot-1695 of 1984 at Annexure B to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute with no order as to costs.
